

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

PATRICK L. MCCRORY, in his official capacity)
as Governor of the State of North Carolina,)
and FRANK PERRY, in his official capacity)
as Secretary, North Carolina Department of)
Public Safety,)
) CASE NO. 5:16-cv-238-BO
Plaintiffs,)
)
)
)
)
UNITED STATES OF AMERICA,)
UNITED STATES DEPARTMENT)
OF JUSTICE, LORETTA E. LYNCH, in her)
official capacity as United States Attorney)
General, and VANITA GUPTA, in her official)
capacity as Principal Deputy Assistant Attorney)
General,)
)
)
Defendants.)

**PLAINTIFFS' UNOPPOSED MOTION TO
TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)**

Plaintiffs Patrick L. McCrory, in his official capacity as Governor of the State of North Carolina (“Governor McCrory”), and Frank Perry, in his official capacity as Secretary, North Carolina Department of Public Safety (“Secretary Perry”), (collectively “plaintiffs”) hereby respectfully move the Court for a transfer of venue to the United States District Court for the Middle District of North Carolina pursuant to 28 U.S.C. § 1404(a). In support of their motion, plaintiffs would respectfully show the Court as follows:

1. On May 9, 2016, plaintiffs filed this suit against the United States of America (“United States”), the United States Department of Justice, Loretta E. Lynch, in her official capacity as United States Attorney General, and Vanita Gupta, in her official capacity as

Principal Deputy Assistant Attorney General (collectively “defendants”). Plaintiffs assert claims for injunctive and declaratory relief concerning plaintiffs’ compliance with Title VII of the Civil Rights Act of 1964 (“Title VII”) and the Violence Against Women Reauthorization Act of 2013 (“VAWA”).

2. On the same date, the United States, through Attorney General Lynch and the United States Department of Justice, filed an action in the United States District Court for the Middle District of North Carolina against the State of North Carolina, Governor McCrory in his official capacity as Governor of the State of North Carolina, the North Carolina Department of Public Safety, the University of North Carolina, and the Board of Governors of the University of North Carolina. In its complaint, the United States requests declaratory and injunctive relief concerning compliance with Title VII, VAWA, and Title IX of the Education Act Amendments of 1972 (“Title IX”) by the defendants named therein. That case is styled as United States of America v. State of North Carolina et al., Case No. 1:16-cv-00425-TDS-JEP (M.D.N.C.) (hereinafter “DOJ litigation”). A copy of this complaint is attached as Exhibit A to plaintiffs’ accompanying memorandum of law.

3. Both the instant lawsuit and the DOJ litigation filed by the United States in the Middle District of North Carolina seek declaratory and injunctive relief related to North Carolina’s Public Facilities Privacy and Security Act, N.C. Session Law 2016-3.

4. Under 28 U.S.C. § 1404(a), “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.”

5. Both this case and the DOJ litigation present substantially similar and overlapping issues of both law and fact. It is further anticipated that much of the proof as well as many of the witnesses will be the same in both actions.

6. Transfer of this case to the Middle District of North Carolina would enable it to be consolidated with or otherwise managed in conjunction with the DOJ litigation. The potential for consolidation of these matters strongly supports a transfer of venue to the Middle District of North Carolina. See, e.g., Hawkins v. Gerber Prods. Co., 924 F. Supp. 2d 1208, 1214 (S.D. Cal. 2013). By having the two actions managed together, the burden on the anticipated witnesses would be reduced and the interests of judicial economy would be advanced. Otherwise, the federal judicial system would be tasked with separately handling actions in two different districts between largely the same parties raising effectively the same issues and seeking the same forms of relief.

7. Additionally, the Middle District of North Carolina was the venue in which the first litigation related to the validity of the Public Facilities Privacy and Security Act, N.C. Session Law 2016-3, was filed. That case is styled as Joaquin Carcano et al. v. Patrick McCrory et al., Case No. 1:16-cv-00236-TDS-JEP (M.D.N.C.), and is already assigned to the United States District and Magistrate Judges who are presiding over the DOJ litigation. Copies of the original and amended complaints filed in that action are attached as Exhibits B and C to plaintiffs' accompanying memorandum of law.

8. Venue could have been properly laid in the Middle District of North Carolina under 28 U.S.C. § 1391(e) because the United States, an agency of the United States, and officers or employees of the United States or an agency thereof acting in their official capacities or under color of legal authority were named as defendants and a substantial part of the events

and omissions giving rise to plaintiffs' claims occurred within the Middle District of North Carolina.

9. Additionally, undersigned counsel have consulted with counsel for defendants and are authorized to state that defendants do not oppose transfer of this matter to the United States District Court for the Middle District of North Carolina, which likewise makes it a proper district for a potential transfer under 28 U.S.C. § 1404(a).

10. For further support, plaintiffs rely upon the grounds and authorities set forth in the supporting memorandum of law filed contemporaneously with this motion.

WHEREFORE, plaintiffs respectfully ask that this case be transferred to the United States District Court for the Middle District of North Carolina pursuant to 28 U.S.C. § 1404(a) for all further proceedings, including trial, and for such other and further relief as this Court may deem appropriate.

Respectfully submitted, this the 17th day of May, 2016.

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*appearing pursuant to Local Rule 83.1(e)

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all CM/ECF participating attorneys, and I hereby certify that I have also mailed the document to the parties listed below.

This the 17th day of May, 2016.

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